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November 18, 2013

VIA ECF

Hon. Harold Baer, Jr.  
U.S. District Court  
500 Pearl Street, Chambers 2230  
New York, NY 10007

AMERICAN CIVIL LIBERTIES  
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Re: *Adkins et al. v. Morgan Stanley et al.*, No. 1:12-cv-7667 (HB)

Your Honor,

We represent Plaintiffs in the above-referenced civil rights action. We write in response to Defendants' November 15, 2013 letter updating the Court regarding developments relevant to Defendants' motion to stay these proceedings (ECF No. 63).

We are pleased that Defendants have withdrawn their motion for a stay of discovery, given that the parties in *Township of Mount Holly v. Mount Holly Gardens Citizens in Action, Inc.* have reached a settlement. However, the remainder of Defendants' letter, addressing their motion for certification of questions for interlocutory review under 28 U.S.C. § 1292(b), constitutes an untimely sur-reply which the Court ought not consider. Defendants' reply to Plaintiffs' opposition to their motion was filed on September 3 (ECF. No. 58), more than two months prior to the date of the November 15 letter. The fact that the Supreme Court will not be addressing the question of disparate impact under the Fair Housing Act this term—in other words, the fact that disparate impact claims remain unquestionably cognizable under the FHA—does not represent a “changed circumstance” that could justify their untimely supplement.

Finally, Defendants' recent letter for the first time requests oral argument on the certification motion. Plaintiffs do not believe that oral argument is necessary here, given that Defendants' motion for certification of questions for interlocutory review turns substantially on questions that have already been fully briefed and argued before this Court in the context of Defendants' motion to dismiss.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rachel E. Goodman', with a long horizontal flourish extending to the right.

Rachel E. Goodman

Cc: Defendants' Counsel (via ECF)

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